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5 **HYDE & SWIGART**

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10 Attorneys for the Plaintiff

11 Diane Cleary

**FILED**

**08 DEC -3 PM 12: 50**

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**DIANE CLEARY,**

Plaintiff,

v.

**GCFS, INC.,**

Defendant.

**CASE NO:**

**08 CV 2241 DMS POR**

**COMPLAINT FOR DAMAGES**

**JURY TRIAL DEMANDED**

**INTRODUCTION**

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

HYDE & SWIGART  
San Diego, California

- 1 collection practices are not competitively disadvantaged, and to promote  
2 consistent State action to protect consumers against debt collection abuses.
- 3 2. The California legislature has determined that the banking and credit system  
4 and grantors of credit to consumers are dependent upon the collection of just  
5 and owing debts and that unfair or deceptive collection practices undermine  
6 the public confidence that is essential to the continued functioning of the  
7 banking and credit system and sound extensions of credit to consumers. The  
8 Legislature has further determined that there is a need to ensure that debt  
9 collectors exercise this responsibility with fairness, honesty and due regard  
10 for the debtor's rights and that debt collectors must be prohibited from  
11 engaging in unfair or deceptive acts or practices.
- 12 3. Diane Cleary, (Plaintiff), through Plaintiff's attorneys, brings this action to  
13 challenge the actions of GCFS, Inc., ("Defendant"), with regard to attempts by  
14 Defendant to unlawfully and abusively collect a debt allegedly owed by  
15 Plaintiff, and this conduct caused Plaintiff damages.
- 16 4. Plaintiff makes these allegations on information and belief, with the exception  
17 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which  
18 Plaintiff alleges on personal knowledge.
- 19 5. Unless otherwise stated, Plaintiff alleges that any violations by Defendant was  
20 knowing and intentional, and that Defendant did not maintain procedures  
21 reasonably adapted to avoid any such violation.

#### 22 JURISDICTION AND VENUE

- 23 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §  
24 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
- 25 7. This action arises out of Defendant's violations of the Fair Debt Collection  
26 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair  
27 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32  
28 ("RFDCPA").

8. Because Defendant does business within the State of California, personal jurisdiction is established.

9. Venue is proper pursuant to 28 U.S.C. § 1391(c).

#### PARTIES

10. Plaintiff is a natural person who resides in the City of Poway, County of San Diego, State of California.

11. Defendant is from the City of Paso Robles, the County of San Luis Obispo, and the State of California.

12. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

13. Defendant is a person who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).

14. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

15. Defendant, in the ordinary course of business, regularly, on behalf of themselves, or others, engage in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collectors as that term is defined by California Civil Code § 1788.2(c).

16. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

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**FACTUAL ALLEGATIONS**

17. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.
18. At all times relevant, Defendant conducted business within the State of California.
19. Sometime before December 2007, Plaintiff is alleged to have incurred certain financial obligations.
20. These financial obligations were primarily for personal, family or household purposes and are therefore a "debt" as that term is defined by 15 U.S.C. §1692a(5).
21. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a "debt" as that term is defined by California Civil Code §1788.2(d), and a "consumer debt" as that term is defined by California Civil Code §1788.2(f).
22. Sometime thereafter, but before January 2008, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.
23. Subsequently, but before January 2008, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.
24. Sometime between December 2007 and January 2008, Defendant mailed a dunning letter to Plaintiff, which Plaintiff subsequently received.
25. This communication to Plaintiff was a "communication" as that term is defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent with 15 U.S.C. § 1692g(a).
26. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b) defines that phrase, and an "initial communication" consistent with Cal. Civ. Code § 1812.700(b).

- 1 27. A copy of Defendant's letter was sent to both Plaintiff's home and Plaintiff's  
2 place of employment. After receiving both letters from Defendant, Plaintiff  
3 contacted Defendant regarding the alleged debt. Plaintiff contacted Bruce  
4 White and left a detailed voicemail message. In her message, Plaintiff asked  
5 Defendant to refrain from sending any correspondence to her place of  
6 employment. Plaintiff also requested a detailed accounting of the alleged  
7 charges on Plaintiff's account.
- 8 28. Plaintiff received no response from Bruce White, nor from any other of  
9 Defendant's representatives regarding her voicemail message. Defendant also  
10 failed to provide Plaintiff with an accounting of her alleged charges.
- 11 29. On or around April 8, 2008, Defendant sent another letter to Plaintiff  
12 regarding the alleged debt. Defendant again sent a letter to Plaintiff's  
13 residence as well as Plaintiff's place of employment, despite her earlier  
14 request.
- 15 30. By sending this letter Defendant communicated with Plaintiff in connection  
16 with the collection of a debt at her place of employment when such a  
17 communication was not necessary to the collection of the alleged debt, and  
18 Defendant knew or had reason to know that the Plaintiff's employer  
19 prohibited the consumer from receiving such communication. Consequently,  
20 Defendant violated 15 U.S.C. § 1692c(a)(3), and Cal. Civ. Code § 1788.12(a).
- 21 31. In Defendant's April 8, 2008, letter it stated ["Under Cal. Civ. Code §  
22 1788.21(a) you are required to notify GCFS, Inc. of any changes in your  
23 name, address or employment."] This communication by Defendant was a  
24 false, deceptive, or misleading representation in connection with the debt  
25 collection as Plaintiff is not a "creditor" or proposed creditor as defined by  
26 Cal. Civ. Code § 1788.2(i), and as such is a violation of 15 U.S.C. § 1692(e).
- 27 32. On April 10, 2008, Plaintiff contacted Brent Peterson and left a voicemail  
28 message instructing Defendant to refrain from sending any correspondence to

1 Plaintiff's place of employment, Plaintiff, again, requested a detailed  
2 accounting of the alleged charges. Defendant failed to respond to her second  
3 request.

4 33. Subsequently, Plaintiff received a letter from Defendant dated July 22, 2008.  
5 Defendant's letter stated a lawsuit had been filed against Plaintiff regarding  
6 the alleged debt, and demanded payment of the alleged debt. Defendant's  
7 letter instructed Plaintiff to contact Defendant to avoid future wage  
8 garnishments, vehicle levies, or liens against property.

9 34. Through this conduct, Defendant represented or implied that nonpayment of  
10 any debt would result in, garnishment, attachment, or sale of property or  
11 wages of a person when such action was not lawful, and Defendant did not  
12 intended to take such action. Consequently, Defendant violated 15 U.S.C.  
13 § 1692e(4). Because this action violated Fair Debt Collection Practices Act it  
14 also violated Rosenthal Fair Debt Collection Practices Act, through Cal. Civ.  
15 Code § 1788.17.

16 35. On July 25, 2008, Plaintiff wrote a letter to Mark McDowell stating that she  
17 had twice contacted Defendant and demanded it refrain from sending  
18 correspondence to Plaintiff's place of employment. Plaintiff also informed  
19 Mark McDowell that she had twice requested a detailed accounting of the  
20 alleged debt, but Defendant failed to respond to either.

21 36. Plaintiff received no response to her July 25, 2008, letter to Defendant.  
22 Defendant also failed to provide Plaintiff with a detailed accounting of the  
23 alleged debt. Plaintiff then contacted Defendant on August 9, 2008, and spoke  
24 to Defendant's representative Gregory Cross. Gregory Cross abused and  
25 harassed Plaintiff by saying, "... you will be dead before you could pay off the  
26 balance due," and, "everyone has to take care of their children, that is no  
27 excuse not to pay your bills."  
28

37. Plaintiff then asked Gregory Cross about Defendants threat to garnishing her wages. Plaintiff informed Gregory Cross that she would lose her job if this happened. Gregory Cross responded, "Well, that may be just what is going to happen. I am suppose to help you but I am not going to help you. You have been *served*." (emphasis added) This statement confused Plaintiff because Plaintiff had, in fact, not yet been served by Defendant.

38. Defendant's conduct was a false representation or implication that documents were legal process. Consequently, Defendant violated 15 U.S.C. § 1692e(13).

39. Through this conduct, Defendant engaged in conduct the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt. Consequently, Defendant violated 15 U.S.C. § 1692d.

40. Further, Defendant used false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer. Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

41. Because this action violated Fair Debt Collection Practices Act it also violated Rosenthal Fair Debt Collection Practices Act, through Cal. Civ. Code § 1788.17.

## CAUSES OF ACTION

### COUNT I

#### VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

#### 15 U.S.C. §§ 1692 ET SEQ.

42. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

43. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.



44. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every defendant, jointly and severally.

## COUNT II

### VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

#### CAL. CIV. CODE §§ 1788-1788.32

45. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

46. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

47. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.

#### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from defendant, as follows:

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**COUNT I**

**FAIR DEBT COLLECTION PRACTICES ACT**

**15 U.S.C. §§ 1692 ET SEQ.**

48. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
49. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
50. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

**COUNT II**

**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

**CAL. CIV. CODE §§ 1788-1788.32**

51. An award of actual damages pursuant to California Civil Code § 1788.30(a);
52. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
53. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

**TRIAL BY JURY**

54. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: 11/19/08

**HYDE & SWIGART**

By: 

Tiffany G. Jensen  
Attorneys for the Plaintiff

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Diane Cleary,

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart  
411 Camino Del Rio South Suite 301, San Diego, CA 92108

## DEFENDANTS

GCFS, Inc.,

08 DEC -3 PM 12: 50

County of Residence of First Listed Defendant SOUTHERN DISTRICT OF CALIFORNIA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED BY:

Attorneys (If Known)

08 CV 2241 DMS POR

DEPUTY

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 375 Theft in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.C.S. § 1692 et seq.

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$  
\$75,000

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/20/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT

157668

AMOUNT

\$350-

APPLYING IFP

JUDGE

MAG. JUDGE

PB 12/24/08

ORIGINAL

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 157668 - MB**

**December 04, 2008  
13:35:08**

**Civ Fil Non-Pris**

USAO #.: 08CV2241 CIVIL FILING

Judge.: DANA M SABRAW

Amount.: \$350.00 CK

Check#.: 2707

**Total-> \$350.00**

FROM: DIANE CLEARY VS GCFS INC